

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

March 9, 2009

2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 10, 2008

Case Number: TSO-0672

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual should be granted a security clearance. ²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf in connection with that employment. During the ensuing background investigation, the local security office (LSO) learned that the individual had previously been diagnosed as suffering from depression, and had received professional treatment for that disorder. Because this information raised legitimate security concerns, the individual was summoned for an interview with a personnel security specialist in March 2008. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. After this evaluation, the DOE psychiatrist prepared a written report, and sent that report to the LSO. Upon reviewing this report, the transcript of the PSI, and the rest of the individual's personnel security file, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The manager of the local security office informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced six exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced five exhibits into the record and presented the testimony eight witnesses, in addition to testifying himself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Notification Letter

As indicated above, the Notification Letter (the Letter) included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a security clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (h) pertains to information indicating that the individual has "an illness or mental condition which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in his judgement or reliability." 10 C.F.R. § 710.8(h). As support for this paragraph, the Letter cites the DOE psychiatrist's diagnosis that the individual suffers from Major Depression, Recurrent, and information in the DOE psychiatrist's report indicating that the individual had previously attempted suicide on multiple occasions, had previously been diagnosed as suffering from Depression, and had been professionally treated for this disorder.

Pursuant to criterion (j), information is derogatory if it indicates that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Under this paragraph, the Letter cites the DOE psychiatrist's diagnosis that the individual suffers from Alcohol Abuse, and information in the DOE psychiatrist's report indicating that the individual: (i) has engaged in a long-standing pattern of excessive drinking, with his last instance of drinking to intoxication occurring at a friend's birthday party in October 2007; (ii) has consumed alcohol prior to, or during, three suicide attempts and one major depressive episode and has attempted to "self-medicate" his depression with alcohol; and (iii) was arrested for Driving While Intoxicated (DWI) in January 1988.

B. The DOE Psychiatrist's Report and Security Concerns

As set forth above, the DOE psychiatrist diagnosed the individual as suffering from Major Depression, Recurrent, in remission and Alcohol Abuse, in remission, and concluded that these disorders were causing, or could cause, a significant defect in his judgement or reliability. He further stated that:

The main concern about [the individual's] alcohol use disorder is the fact that it coexists with his recurrent major depression, and the two disorders have interacted with near lethal consequences in the past. If it were not for the fact of his co-morbid depressive disorder, I would likely have said that there is adequate evidence of rehabilitation or reformation from his alcohol use disorder. However, given the fact that he has never entered into a substance abuse treatment program, continues to drink . . . , has a fairly limited support system, and tends to drink more heavily when faced with life stressors, . . . , there is currently not adequate evidence of rehabilitation or reformation.

DOE psychiatrist's report, DOE Exhibit (DOE Ex.) 3 at 14.

The DOE psychiatrist's report also set forth the factual basis for his diagnoses. With regard to the individual's depression, the report states that he has experienced mild to moderate feelings of depression since his teenaged years, but did not receive any treatment for depression or any other disorder until 1989. During that year, he attempted to commit suicide by allegedly ingesting unspecified amounts of alcohol and an unnamed drug. At the time, he was experiencing problems with his finances, with his college studies, and with his girlfriend. He could not recall any details about the attempt, except that it was "severe." DOE Ex. 3 at 3. He was hospitalized for medical reasons for approximately a week.

After his physical condition stabilized, the report continues, he was transferred to a local mental health facility. There, he was diagnosed as suffering from depression and was prescribed the antidepressant Elavil. The individual remained in the facility for three or four weeks, taking part in individual and group counseling sessions. After his discharge from the mental health facility, the individual had weekly follow-up individual counseling sessions for approximately one year. After that year, he had bi-weekly, then monthly sessions. He participated in some form of counseling from 1989 through 1999 and was prescribed a variety of antidepressants, changing frequently because of adverse side-effects.

In 1993 and again in 1994, the individual allegedly had "less serious" suicide attempts that he characterized as "histrionic," and "reaching out for help." *Id.* at 4. According to the report, they consisted of taking "a few" unspecified pills while he was drinking alcohol. *Id.* From 1995 through 1999, the individual suffered no significant symptoms of depression.

In the fall of 2002, the individual experienced a major depressive episode, triggered by the stress of beginning a new career and moving to a new city. He began to suffer from insomnia and from a reduced appetite, with feelings of anxiety and a decreased ability to concentrate. One evening, he consumed an excessive amount of alcohol, and began "calling people on phones." March 2008 PSI, DOE Ex. 5 at 15. When asked during the PSI whether he attempted suicide that night, he replied in the negative, but added, "Was I pretty close? Maybe, I don't know, you know?" *Id.* at 45. A friend became concerned about the individual and took him to an emergency room at a local hospital.

The report further stated that later that year, the individual began counseling sessions with a local mental health professional. However, after going to a few sessions, the individual stopped attending

because the counselor “was not very attentive.” *Id.* at 48. The counselor referred the individual to a local doctor for antidepressant medication. The doctor diagnosed the individual as suffering from major depressive disorder, and prescribed an antidepressant for him. When interviewed by OPM investigators, the doctor told them that the individual’s prognosis was good, and that his depression had no impact on his judgement and reliability. The individual took the drug for approximately six months, stopping when he began to feel better. As of the date of the DOE psychiatrist’s report, the individual was not taking any antidepressants and was not receiving any counseling.

With regard to the individual’s alcohol consumption, the report states that he began drinking at approximately 17 years of age, and would consume a six-pack of beer with friends about every third weekend, becoming intoxicated once per month. While in college from 1983 through 1987, he would have two to four drinks approximately four nights a week. He explained that he was using alcohol to “self-medicate” his depression. DOE Ex. 3 at 6.

During the period from 1988 through 1991, the individual had three alcohol-related arrests or citations. In January 1988, the individual was arrested for DWI after he struck a pedestrian with his vehicle’s side-view mirror, causing a minor injury. The individual pled guilty, paid the fine and court costs, and attended mandatory alcohol counseling. In November 1991, he was cited for excessive noise by the local police while attending a party at which he drank to excess. One month later, he was arrested for battery and vandalism stemming from an incident during which he pushed his girlfriend and punched out two windows on his mother’s car after consuming alcohol. The individual did not recall the amount of alcohol he drank or his blood alcohol content during these incidents. In general, however, during this period the individual would drink from six to eight beers every three weeks with friends.

The individual’s drinking was heaviest during the period from 1991 through 1999, when he would drink five or six beers and a shot of hard liquor four or five days a week, after work. He developed a tolerance to alcohol and had six to eight alcoholic blackouts during this period, but denied having any significant withdrawal symptoms on the days that he did not drink. After the individual returned to school to study for an advanced degree in 1999, his drinking decreased. From 1999 through 2002, he drank an average of one or two beers every one or two weeks, allegedly becoming intoxicated approximately once per month. From 2003 to May 2008, the individual drank two beers about once per month when he goes out, and about three beers over an hour while watching a weekend sporting event on television at home.

These circumstances adequately justify the DOE’s invocation of criteria (h) and (j), and they raise significant security concerns. A duly qualified mental health professional has found that the individual suffers from emotional or mental conditions that could adversely impact his judgement and reliability. Furthermore, excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual’s reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), Guidelines G and I.*

IV. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

V. FINDINGS OF FACT AND ANALYSIS

At the hearing, the individual attempted to address the DOE’s security concerns by showing, through his testimony and that of his psychiatrist, his mother, two supervisors, two friends, a co-worker and a neighbor, that he does not suffer from any alcohol use disorder or any mental or emotional condition that adversely affects his judgement or reliability. After considering this testimony, as well as the testimony of the DOE psychiatrist, I find that the individual has successfully mitigated the DOE’s security concerns. Specifically, the testimony of the two expert witnesses and the individual’s apparent lack of depressive episodes for the last six years have convinced me that he no longer represents an unacceptable security risk.

The DOE psychiatrist was present throughout the course of the hearing, and stated that, based on the witnesses’ testimony, he now believes that the individual is exhibiting adequate evidence of reformation or rehabilitation. Tr. at 178. Although the DOE psychiatrist had diagnosed the individual as suffering from depression and alcohol abuse, he explained that both of these disorders were in remission, and that it was the synergy of the two that led him to conclude that the individual suffered from an illness or mental condition that caused, or could cause, a significant defect in his judgement or reliability. Tr. at 176-177. However, at the hearing, the individual produced testimony that tended to refute the existence of a link between his alcohol usage and his depressive episodes. The individual’s mother, with whom he was living at the time, testified that the individual was not drinking immediately before, or during, his 1989 suicide attempt. Tr. at 17. The individual’s friends

and co-workers testified that they have periodically consumed alcoholic beverages with the individual and have not seen any indication of a depressed mood on the individual's part. Tr. at 60-63, 67, 79, 84-85, 95. This new information led the DOE psychiatrist to conclude that the connection between the individual's alcohol usage and depressed moods that he "initially thought might be there" had been "weakened." Tr. at 181.

Furthermore, the DOE psychiatrist indicated that new information about the chronology of events surrounding the 2002 depressive episode caused him to revise his earlier evaluation of the individual's judgement and reliability. In the DOE psychiatrist's report, he indicated that the episode happened before the individual sought counseling and before he was referred to the physician who prescribed the antidepressant. The DOE psychiatrist based this conclusion on the individual's statement during the PSI that the episode happened in "October or November" 2002 and on an assumption that the episode happened before the individual was prescribed the antidepressant on November 1, 2002. Tr. at 178. However, at the hearing the individual testified that after he began experiencing insomnia and a decrease in appetite, symptoms that he recognized as precursors to a bout of depression, he sought out counseling and was prescribed an antidepressant approximately 10 or 11 days *before* his depressive episode. Tr. at 121, 145. The DOE psychiatrist stated that the fact that he sought treatment "before the disorder was taking control" was "a good sign in general," and he added that the antidepressant could actually have contributed to the depressive episode. The DOE psychiatrist explained that before the antidepressant in question reaches therapeutic levels in a patient's body, it can cause an "unpleasant sense of agitation" that can aggravate a depressed mood, and that 10 or 11 days may not have been enough time for the drug to take full effect. Tr. at 179-180. Finally, the DOE psychiatrist cited the individual's statement at the hearing that he has resumed counseling as a positive prognostic factor. Tr. at 183. The individual's psychiatrist agreed with the DOE psychiatrist that the individual is currently exhibiting adequate evidence of reformation or rehabilitation. Tr. at 184-185.

The record in this matter adequately supports the DOE psychiatrist's revised conclusions. With regard to the individual's 1989 suicide attempt, it is apparent from the individual's description of those events in the PSI and at the hearing that his recollection of the incident is fragmentary, at best. DOE Ex. 5 at 29; Tr. at 162. I found his mother's testimony to be credible, and I conclude that a preponderance of the evidence now indicates that the 1989 attempt was not alcohol-related. I further found convincing the testimony of the individual's friends and co-workers that the individual has consumed alcohol a number of times since the 2002 incident without exhibiting any signs of depression, and the testimony of the individual that he sought treatment before the 2002 incident.

I also find it significant that, as of the date of the hearing, the individual had not suffered a depressive episode for approximately six years, despite having experienced the loss of his father and of a beloved pet during this period. Five of the individual's witnesses testified that the individual reacted to these events only with the grief that one would normally expect under the circumstances. Tr. at 24-25, 60, 74-75, 84, 92-93. Finally, the individual's efforts to prevent the 2002 depressive episode by seeking counseling and treatment lead me to believe that he will seek treatment to head off any future bouts of depression, once he begins to experience the preliminary stages of such an

incident.³ For these reasons, I agree with the DOE psychiatrist and the individual's psychiatrist that the individual is currently exhibiting adequate evidence of reformation or rehabilitation.

VI. CONCLUSION

Based on the factors discussed above, I conclude that the individual has successfully addressed the DOE's security concerns under criteria (h) and (j), and has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should be granted a security clearance. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: March 9, 2009

³ That his preventive efforts failed in 2002 was due, he testified, to his failure to seek help soon enough. Tr. at 125-126.